

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 ERDA-05 AID-05 CEA-01 CIAE-00 CIEP-01

COME-00 DODE-00 EB-07 FPC-01 H-02 INR-07 INT-05 L-03

NSAE-00 NSC-05 OMB-01 PM-04 USIA-06 SAM-01 OES-06

SP-02 SS-15 STR-04 TRSE-00 ACDA-07 FEA-01 SEC-01

JUSE-00 EUR-12 /113 W

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FM AMEMBASSY CARACAS

TO SECSTATE WASHDC 4298

C O N F I D E N T I A L SECTION 1 OF 2 CARACAS 9610

E.O. 11652: GDS

TAGS: ENRG, EINV, VE

SUBJECT: VENEZUELAN OIL ROYALTY HOLDERS

1. BEGIN SUMMARY: A LOCAL AMERICAN ATTORNEY HAS PRESENTED A LETTER TO THE EMBASSY ON BEHALF OF SEVERAL U.S. CLIENTS ASKING FOR U.S. DIPLOMATIC INTERVENTION WITH THE GOV FOR HOLDERS OF VENEZUELAN OIL ROYALTIES. HE CLAIMS THAT THE AVAILABLE AVENUES OF LEGAL REDRESS ARE PROBLEMATIC. THE EXACT DIMENSIONS OF THE PROBLEM ARE NOT KNOWN BUT BASED ON VARIOUS SOURCES AN ESTIMATE OF ABOUT 100 ROYALTY HOLDERS OF ALL NATIONALITIES AND A FIGURE IN EXCESS OF \$25 MILLION PER YEAR SEEMS REASONABLE. WE CONSIDER THIS A THORNY PROBLEM WITH SEVERAL ISSUES REQUIRING RESOLUTION AND RECOMMEND THAT LEGAL REDRESS EITHER IN THE U.S. OR VENEZUELA BE URGED BEFORE A DEMARCH IS MADE TO THE GOV. END SUMMARY.

2. EMBASSY HAS RECEIVED LETTER WITH LEGAL BRIEF (BEING POUCHED TO ARA/NC) FROM RICHARD CHADWICK-COLLINS, A LOCAL U.S. ATTORNEY AFFILIATED WITH LAW FIRM OF LARES, TEJERA & ASOCIADOS, OUTLINING THE POSITION OF U.S. HOLDERS OF VENEZUELAN OIL ROYALTIES AND REQUESTING A U.S. CONFIDENTIAL

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DIPLOMATIC APPROACH TO THE VENEZUELAN GOVERNMENT. WITH

THE DEPARTMENT'S CONCURRENCE WE PROPOSE TO RESPOND THAT SINCE NO LEGAL REDRESS HAS BEEN SOUGHT, THE EMBASSY IS NOT IN A POSITION AT THIS TIME TO UNDERTAKE ESPOUSAL OF HIS CLIENTS' CLAIMS. WE RECOGNIZE, HOWEVER, THE THORNINESS OF THE VARIOUS ISSUES INVOLVED IN THIS QUESTION AND THE PURPOSE OF THIS MESSAGE IS TO SUMMARIZE THE CHADWICK-COLLINS' PRESENTATION, LAY OUT WHAT THE POST IS AWARE OF CONCERNING THE SCOPE OF THE PROBLEM AND TO HIGHLIGHT THE MAJOR ISSUES AS WE SEE THEM.

3. CHADWICK-COLLINS' PRESENTATION STATED INTER ALIA:

"A. U.S. ROYALTY HOLDERS HAVE BEEN DEPRIVED OF PROPERTY IN VENEZUELA WITHOUT COMPENSATION AND CONTRARY TO VENEZUELAN AND INTERNATIONAL LAW;

"B. APART FROM AN APPEAL TO THE VENEZUELAN GOVERNMENT THROUGH THE U.S. EMBASSY ON A DIPLOMATIC BASIS, U.S. ROYALTY HOLDERS ARE WITHOUT AN EFFECTIVE MEANS OF RECOVERING COMPENSATION FOR THEIR SUBSTANTIAL LOSSES;

"C. EVEN THOUGH THE CHANCES OF OBTAINING RELIEF FROM THE VENEZUELAN GOVERNMENT THROUGH DIPLOMATIC CHANNELS ARE SLIM AT BEST, THAT EFFORT SHOULD BE MADE AS A MATTER OF PRINCIPLE, THAT IS TO ALERT THE VENEZUELAN GOVERNMENT THAT THE U.S. GOVERNMENT WILL TAKE ACTION TO PROTECT ITS NATIONALS WHO HAVE BEEN DAMAGED THROUGH DISREGARD OF ESTABLISHED INTERNATIONAL LEGAL PRINCIPLES."

4. CHADWICK-COLLINS ALSO STATES ROYALTY HOLDERS HAVE CONSIDERED SUIT FOR PART OF THE COMPENSATION OR TECHNOLOGICAL FEES PAID FORMER CONCESSIONAIRES BUT HAVE DESISTED "DUE TO DIFFICULTIES IN ESTABLISHING THE LEGAL BASIS FOR SUCH CLAIMS." FURTHER, "EVEN THOUGH LEGAL PRINCIPLES CLEARLY FAVOR THE ROYALTY HOLDERS, THERE IS LITTLE OR NO REASON TO BELIEVE THAT THE VENEZUELAN SUPREME COURT COULD HAND DOWN A FAVORABLE DECISION IN TODAY'S HIGHLY NATIONALISTIC ATMOSPHERE." IN ADDITION, "ATTACHMENT OF VENEZUELAN ASSETS (AIRCRAFT, SHIPS) FOUND ABROAD" HAS CONFIDENTIAL

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ALSO BEEN CONSIDERED BUT "IT IS HOPED THAT THIS CAN BE AVOIDED IF OTHER MEANS OF OBTAINING REDRESS CAN BE DEVELOPED." FINALLY, "THE ONLY FEASIBLE MEANS OF REDRESS OPEN TO ROYALTIES HOLDERS IS TO OBTAIN THE ASSISTANCE OF THE U.S. AND BRITISH GOVERNMENTS IN THE FORM OF A DIPLOMATIC APPROACH TO THE VENEZUELAN GOVERNMENT..."

5. ACTUALLY, CHADWICK-COLLINS PRIVATELY IS NOT TOO

SANGUINE THAT A DIPLOMATIC DEMARCH WOULD BE ANY MORE EFFECTIVE THAN THE OTHER MEASURES CONSIDERED. HE ALSO BELIEVES THAT THE COST OF SUPREME COURT LITIGATION WOULD BE PROHIBITIVE. WHAT HE WOULD REALLY LIKE TO DO IS JOIN WITH THE "VENEZUELAN SYNDICATE" (SEE BELOW) WHICH HE UNDERSTANDS IS IN NEGOTIATION WITH THE GULF OIL CO. BASED ON A DECREE OF LONG STANDING ISSUED BY A DELAWARE COURT WHICH REQUIRES GULF TO PAY THE "SYNDICATE" A FEE OF 2 PERCENT IN LIEU OF ROYALTIES BECAUSE OF A DISPUTED SALE MANY YEARS AGO. IT IS HIS ASSUMPTION THAT GULF UNDER THESE TERMS WOULD BE PREPARED TO SETTLE WITH THE SYNDICATE AND WOULD PER FORCE HAVE TO SETTLE WITH ALL OTHER CLAIMANTS IN SIMILAR CIRCUMSTANCES.

6. CLIENTS OF CHADWICH-COLLINS INCLUDE GOLDEN EAGLE REFINING CO., INC., ARNOLD LORBEER AND RALPH J. GUTMAN, TRUSTEES, ARNOLD LORBEER, INDIVIDUALLY, AND MRS. GOERGETTE MEYER, WHO RECEIVED ROYALTIES FROM VENEZUELA IN EXCESS OF \$360,000 IN 1974. WE UNDERSTAND FROM CHADWICK-COLLINS THAT MOST OF HIS CLIENTS HOLD ROYALTIES IN THE MENE GRANDE CONCESSION WHICH WAS 50 PERCENT GULF, 25 PERCENT SHELL AND 25 PERCENT INTERNATIONAL. CHADWICK-COLLINS BELIEVES THAT HIS GROUP MIGHT ALSO HOLD ROYALTIES ON CREOLE PETROLEUM AND TEXACO.

7. WE HAVE NO EXACT INFORMATION ON THE SCOPE OF THE PROBLEM, HOWEVER, WE ARE AWARE THAT ULTRAMAR CO., LTD. OF ENGLAND REPRESENTS A GROUP OF BRITISH ROYALTY

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ACTION ARA-10

INFO OCT-01 ISO-00 ERDA-05 AID-05 CEA-01 CIAE-00 CIEP-01

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C O N F I D E N T I A L SECTION 2 OF 2 CARACAS 9610

HOLDERS WHO HAD BEEN RECEIVING ROYALTIES OF ABOUT 6 MILLIONS POUNDS PER YEAR. THERE IS ALSO AMERICAN ULTRAMAR, LTD. OF MT. KISCO, N.Y. (32 ROYALTY HOLDERS ACCORDING TO 75 STATE 177721). IN ADDITION, ACCORDING TO CHADWICK-COLLINS, THE "VENEZUELAN SYNDICATE," WHICH INCLUDES MARY TODD HUNTER CLARK ROCKEFELLER AND HER BROTHER JOHN CLARK, BOTH OF NEW YORK, WERE RECEIVING ROYALTIES OF ABOUT \$3 MILLION PER YEAR EVEN BEFORE THE OPEC INCREASES IN OIL PRICES BASED ON THE MENE GRANDE CONCESSION. THIS GROUP MAY BE SYNONOMOUS WITH THE DELAWARE TRUST COMAPNY. THE FAMILY OF SENATOR MIGUEL OTERO SILVA, THE NOTED VENEZUELAN RADICAL INTELLECTUAL, WHICH WAS ASSOCIATED WITH THE SAME CONCESSION BUT WAS NOT PART OF THE "VENEZUELAN SYNDICATE," WAS RECEIVING APPROXIMATELY \$600 THOUSAND A YEAR. THE PROMINENT ZULOAGA FAMILY OF VENEZUELA ALSO HAD SIGNIFICANT ROYALTY HOLDINGS AS DID THE LATE EBERT BOYLAN, A LONG-TIME U.S. RESIDENT WHO RECEIVED APPROXIMATELY \$70 THOUSAND A YEAR PRIOR TO THE OIL PRICE RISE AND WHOSE HOLDINGS HAVE APPARENTLY PASSED TO HEIRS IN THE U.S. WE NOTE FROM A DEPARTMENTAL MEMCON OF JULY 17, 1955, THAT ASSOCIATE GENERAL COUNSEL FOR GULF SAID MENE GRANDE HAD BEEN CONFIDENTIAL

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PAYING OUT APPROXIMATELY \$25 MILLION PER YEAR AND HIS GUESS THAT THERE WERE PROBABLY 100 ROYALTY HOLDERS. WE HAVE NO INFORMATION ON THE "MCKAY TRANSFER."

8. MAJOR ISSUES INVOLVED:

A. WHAT IS THE LIABILITY OF THE GOV? UNDER THE VENEZUELAN NATIONALIZATION LAW, THE CONCESSIONAIRES WERE NOT COMPENSATED FOR THEIR CONCESSIONS, ONLY FOR PHYSICAL PROPERTIES AND ASSETS. FURTHER, AS WE NOTED IN 75 CARACAS 7993, THE LAW STATES, "THE STATE...WILL ASSUME NO OBLIGATION FOR LIABILITIES FOR THE CONCESSIONAIRES AND WITH THIRD PARTIES IN OR OUTSIDE THE COUNTRY." TO SOME EXTENT, HOWEVER, PAYMENTS COVERING SERVICE CONTRACTS AND THE LIKE COULD BE CONSIDERED AS SOME DEGREE OF COMPENSATION FOR THE DENIAL OF THE CONCESSIONAIRES' RIGHT TO THE FUTURE EXPLOITATION OF THEIR CONCESSIONS. THE TACK OF THE GOV CAN BE EXPECTED TO BE, IF ANY LIABILITY EXISTED WITH REGARD TO ROYALTY HOLDERS, THIS WAS PROPERLY A CHARGE AGAINST THE CONCESSIONAIRES;

B. WHAT ARE THE POSSIBILITIES OF CONFRONTATION WITH THE GOV OVER THESE ISSUES? WE CAN EXPECT THAT THE GOV COULD NOT IN POLITICAL TERMS FIRST DENY COMPENSATION TO THE CONCESSIONAIRES FOR "OIL IN THE GROUND" AND THEN TURN AROUND AND PAY IT TO ROYALTY HOLDERS. IN ADDITION, (BEGIN UNDERLINE EX GRATIA (END UNDERLINE) PAYMENT WOULD NOT SEEM TO FIT IN WITH WHAT WE KNOW OF THE VENEZUELAN CHARACTER. THE OPPOSITION PARTIES WOULD HAVE A BANNER DAY IN THE EVENT OF EITHER SUCH ATTEMPT BY THE GOV. NATIONALIZATION AS AN ISSUE WHICH IS NOW HISTORY AND ACCORDINGLY QUIESCENT WOULD REVIVE WITH A VENGEANCE;

C. WOULD IT REOPEN THE COMPENSATION ISSUE WITH REGARD TO THE COMPANIES? WE ARE ON RECORD WITH THE GOV IN NOT AGREEING WITH THEIR STANDARD OF COMPENSATION IN THE PETROLEUM NATIONALIZATION. THIS STANCE HAS BEEN MITIGATED SOMEWHAT BY THE SEEMING ACQUIESCENCE OF MOST COMPANIES IN THE "HIDDEN COMPENSATION" REPRESENTED BY THE SERVICE CONTRACTS. SUCH "COMPENSATION" IS TACIT AND WOULD NEVER BE ACKNOWLEDGED BY THE GOV. AGAIN, THE CONFIDENTIAL

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ISSUE APPEARS QUIESCENT LOCALLY. NECESSARY ELEMENTS OF JUDGMENT WOULD BE THE DEGREE OF SATISFACTION ON THE PART OF THE COMPANIES TO THE PRESENT ARRANGEMENT AND WHETHER IT WOULD BE WORTH THE RISK OF JEOPARDIZING SUCH ARRANGEMENTS FOR PURPOSES OF ESPOUSING THE CLAIMS OF ROYALTY HOLDERS;

D. DO ROYALTY HOLDERS HAVE A LEGAL CLAIM AGAINST FORMER CONCESSIONAIRES? CHADWICK-COLLINS AT LEAST PRIVATELY FEELS THAT THIS IS THE MOST PROMISING AVENUE FOR REDRESS. HE IS HAMPERED IN THIS QUEST BY A LACK OF INFORMATION AS TO WHAT MIGHT BE TRANSPIRING AMONG OTHER ROYALTY HOLDERS IN THE U.S. THE BRITISH FOREIGN OFFICE APPARENTLY FEELS THAT THE LEGAL CASE IN VENEZUELA IS WEAK AND THE BRITISH AMBASSADOR IN CARACAS IS ADAMANT IN REFUSING TO ESPOUSE THE CASE. IN ADDITION TO WHATEVER LEGAL JUDGMENT THE FOREIGN OFFICE MAY HAVE RENDERED, THE AMBASSADOR IS ALSO INFLUENCED BY CONSIDERATIONS CONCERNING THE ENORMOUS WINDFALL ROYALTY HOLDERS RECEIVED IN RECENT YEARS AND PROFESSES TO BELIEVE THAT THEY HAVE ALREADY "GOTTEN THEIRS;"

E. HAVE ROYALTY HOLDERS SOUGHT LEGAL REDRESS? CHADWICK-COLLINS' CLIENTS, AND PRESUMABLY OTHER ROYALTY HOLDERS AS WELL, HAVE NOT SOUGHT LEGAL REDRESS IN VENEZUELA PROBABLY BECAUSE OF THE TIME AND EXPENSE INVOLVED, AND POSSIBLY ALSO BECAUSE OF WHAT THEY THINK WOULD BE

THE FUTILITY OF SUCH A COURSE. WE ARE NOT IN A POSITION
TO JUDGE THE MERITS OF THESE VARIOUS PROPOSITIONS.
IT DOES SEEM PRUDENT, HOWEVER, IN VIEW OF THE COMPLICATED
NATURE OF THE ISSUES INVOLVED TO INSIST THAT ROYALTY
HOLDERS SHOULD SEEK LEGAL REDRESS EITHER IN THE U.S. OR
VENEZUELAN COURTS BEFORE CONSIDERING A DEMARCH TO
THE GOV.

9. ACTION REQUESTED: WE WOULD APPRECIATE THE CONCURRENCE
OF THE DEPARTMENT WITH REGARD TO OUR PROPOSED RESPONSE
TO THE CHADWICK-COLLINS' LETTER AND THE DEPARTMENT'S
GUIDANCE CONCERNING OUR POSITION WITH REGARD TO
ROYALTY HOLDERS.

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